

**PT 98-27**

**Tax Type: PROPERTY TAX**

**Issue: Government Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>DUPAGE AIRPORT AUTHORITY</b>	)		
<b>Applicant</b>	)		
	)	<b>Docket #</b>	<b>See attached</b>
<b>v.</b>	)		
	)	<b>Parcel Index #</b>	<b>Exhibit A.</b>
<b>THE DEPARTMENT OF REVENUE</b>	)		
<b>OF THE STATE OF ILLINOIS</b>	)		

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. Robert J. Best appeared on behalf of the DuPage Airport Authority.

Synopsis:

The hearing in this matter was held on January 22, 1998, at 100 West Randolph Street, Chicago, Illinois, to determine whether or not the 3 DuPage County Parcel Index Numbers listed in the right-hand column on Exhibit A, attached to the Notice of Decision in this matter, qualified for exemption for the appropriate assessment year.

Exhibit A includes a file number in the left-hand column, the Department of Revenue Docket Number in the center column, and the DuPage County Parcel Index Number (hereinafter referred to as a "PIN") in the right-hand column. It should be noted that File Nos. 20 and 21 concern the same PIN. File No. 20 involves that PIN for the 1990 assessment year. File No. 21 involves said PIN for the 1992 assessment year. In an attempt to avoid confusion, all references in this Recommendation For Disposition will be to the File No. shown in the left-hand column.

The issues concerning these 4 files include, first, whether the DuPage Airport Authority (hereinafter referred to as the "Applicant") owned the parcels identified by the various File Nos. during the appropriate assessment year; secondly, whether the applicant is an airport authority; and lastly, whether the parcels identified by those File Nos. were, during the appropriate assessment year, being used for purposes which were primarily airport related. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned these parcels during all of the appropriate assessment year. It is further determined that the applicant is an airport authority. Finally, it is determined that File Nos. 1, 3, 20, and 21 were all used for primarily airport related purposes during the appropriate assessment year. It is recommended that File Nos. 1, 3, 20, and 21 be exempt from real estate tax for the appropriate assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the 3 DuPage County PINs identified as File Nos. 1, 3, 20, and 21 did not qualify for exemption for the appropriate assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On January 23, 1991, the DuPage County Board of Review transmitted to the Department the Applications for Property Tax Exemption To Board of Review concerning File Nos. 1, 3, and 20. These files concerned applications for exemption for the 1990 assessment year. (Dept. Ex. Nos. 2-1, 2-3, and 2-20)

3. On March 13, 1992, the DuPage County Board of Review transmitted to the Department the Application for Property Tax Exemption To Board of Review concerning File No. 21. This file concerned an application for exemption for the 1992 assessment year. (Dept. Ex. No. 2-21)

4. On May 15, 1991, the Department notified the applicant that it was denying the exemption of the parcels identified as File Nos. 1 and 3 for the 1990 assessment year. (Dept. Ex. Nos. 3-1, & 3-3)

5. On September 5, 1991, the Department notified the applicant that it was denying the exemption of the parcel identified as File No. 20 for the 1990 assessment year. (Dept. Ex. No. 3-20)

6. On May 7, 1992, the Department notified the applicant that it was denying the exemption of the parcel identified as File No. 21 for the 1992 assessment year. (Dept. Ex. No. 3-21)

7. On May 31, 1991, the attorneys for the applicant requested a formal hearing concerning the parcels identified as File Nos. 1 and 3. (Dept. Ex. Nos. 4-1 & 4-3)

8. On July 26, 1991, the attorneys for the applicant requested a formal hearing concerning the parcel identified as File No. 20. (Dept. Ex. No. 4-20)

9. On May 15, 1992, the applicant requested a formal hearing concerning the parcel identified as File No. 21. (Dept. Ex. No. 4-21)

10. The hearing in this matter conducted on January 22, 1998, was held pursuant to those requests.

11. These parcels were all owned by the applicant on January 1, 1990. (Dept. Ex. Nos. 2-1A, 2-3A, 2-20A, and 2-21A)

12. The applicant is an airport authority. (Tr. pp. 19 & 20)

13. Part of the property on which the applicant operates the airport was a private airfield beginning in 1927. During World War II the U.S. Navy took over that private airfield. At the end of the war, the War Assets Administration sold the airport for one dollar to DuPage County. (Tr. pp. 18 & 19)

14. In 1974, a referendum was passed by the communities of Batavia, Geneva, St. Charles, and West Chicago which created the Fox Valley Airport Authority. DuPage County in 1980 conveyed the existing airport property to the Fox Valley Airport Authority. (Tr. p. 19)

15. During 1987, DuPage Airport Authority, the applicant, was created. The airport property of Fox Valley Airport Authority was then conveyed to the applicant. (Tr. p. 19)

16. Federal Aviation Authority (hereinafter referred to as the "FAA") regulations, require airports to own and control the use of defined areas beyond the end of the paved portion of runways. This requirement is necessary to prevent the restriction of visibility and also to prevent height obstructions which might interfere with the takeoff and landing of aircraft. These areas are called runway protection zones and lateral transitional surfaces. (Tr. pp. 52-58)

17. File No. 1 concerns a parcel located on the east side of Keil Road. Keil Road is a north-south township road which is west of Runway 15/33. During 1990, this parcel had a picnic table and a trash can on it and was used by the general public to watch airport takeoffs and landings. The West Chicago Park District provided the picnic table. The applicant mowed the grass, emptied the trash can, and generally provided maintenance and security for the parcel. There was no formal agreement between the park district and the applicant. During 1990, the applicant was in the process of attempting to acquire the parcels along both sides of Keil Road. On August 15, 1996, Keil Road was vacated. During 1990, there were no buildings on the parcel identified as File No. 1. During 1990, this parcel was not leased for farming. (Tr. pp. 33-36, 42, & 72)

18. File No. 3 concerns a parcel over which a segment of an airport road had been built. This parcel is located within the lateral transitional surface of Runway 15/33. During 1990, there were no buildings on this parcel. During 1990, this parcel was maintained by the applicant. Finally, the parcel identified as File No. 3 was not leased for farming during 1990. (Tr. pp. 55-59, & 72, Appl. Ex. No. 9)

19. The Files identified as 20 and 21 concern the applicant's use of DuPage County PIN 01-32-200-002 for the 1990 and 1992 assessment years. This parcel was acquired by DuPage County during the 1960s or before. During the late 1960s and early 1970s, it was used as a landfill for the western part of DuPage County. At some point in the early 1970s the landfill was

capped. There is very little top soil covering the rubbish and garbage that was placed there. (Tr. p. 29)

20. The parcel which is identified in File Nos. 20 and 21 is located in a direct line east of the east end of what is now the taxiway for Runway 10/28. The centerline of this taxiway was built 700 feet south of and parallel to the centerline of existing runway 10/28, pursuant to the applicant's airport expansion plan. In the future, when there is sufficient air traffic, this taxiway can be rebuilt as a parallel runway to runway 10/28. By FAA regulation, a taxiway is only required to be 400 feet from a runway. Parallel runways are required by FAA regulation to be 700 feet apart. (Tr. pp. 30 & 31, & 62)

21. There also would be a safety consideration in rebuilding the taxiway for runway 10/28 as a parallel runway. There are buildings within the flight path at both ends of existing runway 10/28. On a projected flight path off the east end of the existing taxiway, assuming it were rebuilt as a runway, there are several parcels owned by the applicant, including the parcel identified as File Nos. 20 and 21. In fact, assuming this taxiway were rebuilt as a runway, the parcel identified as File Nos. 20 and 21 would be within the approach surface area for that runway. On a projected flight path off the west end of the existing taxiway, assuming it is rebuilt as a runway, is the St. Charles Industrial Park storm water retention facility. No buildings may be built on this storm water retention facility. (Tr. pp. 31-33, & 62, Appl. Ex. No. 10)

#### Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The Illinois Supreme Court long ago determined that the question of whether property is exempt from taxation depends upon the constitutional and statutory provisions in force at the time for which the exemption is claimed. The People v. Salvation Army, 305 Ill. 545 (1922).

1989 Illinois Revised Statutes, Chapter 120, Paragraph 500.20, exempts certain property from taxation in part, as follows:

All property of every kind belonging to any Airport Authority and used for Airport Authority purposes . . . .

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

In Fox Valley Airport Authority v. Department of Revenue, 164 Ill.App.3d 415 (2nd Dist. 1987), the Court acknowledged that land held by an airport authority for future expansion was eligible for tax-exempt status so long as it was not leased for a purpose which was not airport related. Citing "AN ACT in relation to airport authorities", the Court stated as follows:

An airport authority has the power to acquire property 'used or useful for the location, establishment, development *expansion* \* \* \* of any such public airport' (emphasis added) (Ill. Rev. Stat. 1985, ch. 15 1/2 par. 68.8-02) to carry out its intended purposes. (164 Ill.App.3d 419)

In the case of Harrisburg-Raleigh Airport Authority and Fox Valley Airport Authority v. The Department of Revenue, 126 Ill.2d 326 (1989), the Illinois Supreme Court interpreted the provision concerning the exemption of airport authority airports found in Paragraph 500.20. The Court determined that, unlike municipal or county airports whose statutory provision required

use for purely public purposes, this provision would allow somewhat more private uses if they were airport related. The Court also found that the holding of property for future expansion constituted a use of property for airport authority purposes. The Court determined that, while property need not be exclusively used for airport authority purposes to be exempt, its primary current use must be airport related. The Court then found that two parcels, one being used for residential purposes, and the other being used for farming, even though it appeared that they were being held for future expansion, did not qualify for tax exemption.

I conclude that the applicant owned each of the parcels identified as File Nos. 1, 3, 20, and 21 during the appropriate assessment year. I also conclude that the applicant is an airport authority. I further conclude that each of these parcels was being held by the applicant for future expansion, which is primarily an airport related purpose. Finally I conclude that there were no buildings on any of these parcels and that none of these parcels were leased during the appropriate assessment year.

I therefore recommend that the parcels identified as File Nos. 1 and 3 be exempt from real estate taxes for the 1990 assessment year. (DuPage County PINs 01-30-402-005 & 01-30-402-017)

I further recommend that the parcel identified as File Nos. 20 and 21 be exempt from real estate taxes for the 1990 and 1992 assessment year. (DuPage County PIN 01-32-200-002)

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
April 7, 1998

# DUPAGE AIRPORT AUTHORITY

## EXHIBIT A

<u>File No.</u> <u>No.</u>	<u>Docket No.</u>	<u>Parcel Index No.</u>	<u>Docket</u>
1	90-22-689	01-30-402-005	92-22-12
2	90-22-724	01-29-303-008	92-22-11
3	90-22-769	01-30-402-017	92-22-10
4	90-22-708	01-29-303-036	91-22-779
5	90-22-709	01-29-303-033	91-22-780
6	90-22-710	01-29-303-032	91-22-781
7	90-22-711	01-29-303-031	91-22-782
8	90-22-712	01-29-303-030	91-22-788
9	90-22-713	01-29-303-029	91-22-789
10	90-22-714	01-29-303-028	91-22-773
11	90-22-715	01-29-303-027	91-22-772
12	90-22-716	01-29-303-026	91-22-771
13	90-22-694	01-30-300-037	91-22-783
14	90-22-695	01-30-300-030	91-22-784
15	90-22-696	01-30-300-029	91-22-776
16	90-22-697	01-30-300-028	91-22-790
17	90-22-698	01-30-300-027	91-22-791
18	90-22-699	01-30-300-026	91-22-770
19	90-22-700	01-30-300-025	91-22-785
20	90-22-674	01-32-200-002	
21	92-22-15	01-32-200-002	
22	91-22-654	04-06-401-018	

The parcel which is identified in File Nos. 20 and 21 is located in a direct line east of the east end of what is now the taxiway for Runway 10/28.